

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

UNITED STATES OF AMERICA)
)
 vs.)
)
LUIS ENRIQUE GARCIA,)
)
 Defendant.)

TRANSCRIPT OF PLEA AND RULE 11 HEARING
BEFORE THE HONORABLE DAVID C. KEESLER
UNITED STATES MAGISTRATE JUDGE
FEBRUARY 4, 2013

APPEARANCES:

On Behalf of the Government:

KIMLANI M. FORD, ESQ.
United States Attorney's Office
227 West Trade Street, Suite 1700
Charlotte, North Carolina

On Behalf of the Defendant:

CHARLES L. MORGAN, JR., ESQ.
101 North McDowell Street, Suite 200
Charlotte, North Carolina

Proceedings digitally recorded and transcribed by:

Cheryl A. Nuccio, RMR-CRR
Official Court Reporter
United States District Court
Charlotte, North Carolina

P R O C E E D I N G S

(Transcript of proceedings digitally recorded on
February 4, 2013.)

(Interpreter was sworn.)

THE COURT: Okay. The next matter on this morning's
docket is Luis Enrique Garcia. The number on this is
5:12-cr-54.

We appreciate Ms. Gonzalez being here to interpret
as needed.

Mr. Morgan, do you represent him?

MR. MORGAN: I do, Your Honor.

THE COURT: Okay. Who is here for the government on
this one?

MS. FORD: I am, Your Honor.

THE COURT: Ms. Ford, thank you.

Okay. The case is on for plea and Rule 11. The
file reflects that there is a plea agreement in the case. The
plea agreement calls for a plea of guilty by Mr. Garcia to
count one in the bill.

Mr. Morgan, is he prepared to go ahead with that
now?

MR. MORGAN: He is.

THE COURT: Okay. Mr. Garcia, in order for me to
accept your plea, I need to ask you some questions. But
before we get going, we need to have you sworn in. So if you

1 would, please stand, put your left hand on the Bible, raise
2 your right and face the clerk, please.

3 (Defendant was sworn.)

4 THE COURT: All right. Thank you. Have a seat
5 there. Make yourself comfortable.

6 Mr. Garcia, as we go through the questions now,
7 please keep your voice up so I can hear you. If you have any
8 concerns as we go, feel free to talk to Mr. Morgan at any
9 time. Do you understand?

10 THE DEFENDANT (Interpreter): Yes.

11 THE COURT: All right. Here we go.

12 Do you understand that you're under oath and
13 required to give truthful answers to these questions?

14 THE DEFENDANT (Interpreter): Yes.

15 THE COURT: Do you understand that if you give false
16 information under oath, you may be prosecuted for perjury or
17 false statement?

18 THE DEFENDANT (Interpreter): Yes.

19 THE COURT: After consulting with your lawyer, do
20 you want this court to accept your guilty plea to count one in
21 the bill of indictment?

22 THE DEFENDANT (Interpreter): Yes.

23 THE COURT: Do you understand you have the right to
24 have a U.S. district judge conduct this proceeding?

25 THE DEFENDANT (Interpreter): Yes.

1 THE COURT: Recognizing that right, do you expressly
2 consent to proceed before me, a United States magistrate
3 judge?

4 THE DEFENDANT (Interpreter): Yes.

5 THE COURT: Are you now under the influence of
6 alcohol, medicines or drugs of any kind?

7 THE DEFENDANT (Interpreter): No.

8 THE COURT: Is your mind clear today and do you
9 understand you're here to enter a guilty plea that cannot
10 later be withdrawn?

11 THE DEFENDANT (Interpreter): Yes.

12 THE COURT: Have you received a copy of the bill of
13 indictment in your case and have you discussed it with your
14 lawyer?

15 THE DEFENDANT (Interpreter): Yes.

16 THE COURT: At this point what I'm going to do,
17 Mr. Garcia, is to go over with you the charge that you're
18 pleading to. As I mentioned earlier, the plea agreement in
19 your case calls for a plea of guilty by you to count one in
20 the bill. Count one alleges drug conspiracy. But in
21 particular, it reads as follows:

22 From in or about 2008 to on or about December 7,
23 2012, in Watauga County, within the Western District of North
24 Carolina, and elsewhere, you, along with your co-defendant,
25 Javier Sanchez Chavez, did knowingly and intentionally

1 conspire and agree with each other and with others to
2 distribute and to possess with intent to distribute controlled
3 substances, namely, a mixture and substance containing a
4 detectable amount of methamphetamine.

5 This is a violation of the drug conspiracy statute,
6 Title 21, United States Code, Sections 846 and 841(b)(1)(A).

7 Now, according to your plea agreement, based upon
8 the charge that's been brought and the amount of
9 methamphetamine involved, the maximum penalty for you for this
10 offense is not less than ten years nor more than life
11 imprisonment, a \$10 million fine, or both, and a period of
12 supervised release.

13 Ms. Ford, is that correct?

14 MS. FORD: That is correct because he does not have
15 a prior felony drug conviction.

16 THE COURT: Okay. Thank you.

17 So, Mr. Garcia, that is the charge that you're
18 pleading guilty to today and the maximum penalty that it
19 carries. Have you talked to Mr. Morgan about these things?

20 THE DEFENDANT (Interpreter): Yes.

21 THE COURT: Do you understand the charge you're
22 pleading guilty to today, including the maximum penalty that
23 could apply to you?

24 THE DEFENDANT (Interpreter): Yes.

25 THE COURT: All right. So, Mr. Garcia, do you

1 understand that if you're not a citizen of the United States,
2 your guilty plea could have adverse immigration consequences
3 for you?

4 THE DEFENDANT (Interpreter): Yes.

5 THE COURT: Do you understand that if you're not a
6 citizen, your guilty plea could result in deportation from the
7 country?

8 THE DEFENDANT (Interpreter): Yes.

9 THE COURT: Have you talked to your lawyer about how
10 the U.S. Sentencing Guidelines might apply to your case?

11 THE DEFENDANT (Interpreter): Yes.

12 THE COURT: Do you understand the district judge
13 will not be able to determine your sentence until after a
14 presentence report has been prepared and you've had a chance
15 to comment on that?

16 THE DEFENDANT (Interpreter): Yes.

17 THE COURT: Do you also understand that in some
18 circumstances you may receive a sentence that is different,
19 that is, either higher or lower than that called for by the
20 guidelines?

21 THE DEFENDANT (Interpreter): Yes.

22 THE COURT: Do you understand the court may order
23 restitution or the payment of money by you if that's
24 appropriate in your case?

25 THE DEFENDANT (Interpreter): Yes.

1 THE COURT: Do you understand that if the sentence
2 is more severe than you would expect or the court does not
3 accept the government's recommendation, you will still be
4 bound by your plea and have no right to withdraw it?

5 THE DEFENDANT (Interpreter): Yes.

6 THE COURT: Do you understand that parole has been
7 abolished and if you are sentenced to a term of imprisonment,
8 you will not be released early on parole?

9 THE DEFENDANT (Interpreter): Yes.

10 THE COURT: If your sentence includes imprisonment,
11 do you understand the district judge may also order a term of
12 what is called supervised release?

13 THE DEFENDANT (Interpreter): Yes.

14 THE COURT: Do you also understand that if you
15 violate the terms of supervised release, you could go back to
16 prison for an additional period of time?

17 THE DEFENDANT (Interpreter): Yes.

18 THE COURT: Now, do you understand you have the
19 right to plead not guilty, to have a speedy trial before a
20 judge and jury, to summons witnesses to testify in your
21 behalf, and to confront witnesses against you?

22 THE DEFENDANT (Interpreter): Yes.

23 THE COURT: If you exercised your right to trial,
24 you'd be entitled to the assistance of a lawyer. You would
25 not be required to testify. You'd be presumed innocent and

1 the burden would be on the government to prove your guilt
2 beyond a reasonable doubt. Do you understand all these
3 things?

4 THE DEFENDANT (Interpreter): Yes.

5 THE COURT: What all that amounts to, Mr. Garcia, is
6 that you do have the right to plead not guilty and have a
7 trial if you want to. Do you understand that?

8 THE DEFENDANT (Interpreter): Yes.

9 THE COURT: By entering this plea of guilty, you're
10 waiving that right. There is not going to be a trial. There
11 will be one more hearing where the district judge will
12 determine, first, whether there is a factual basis for your
13 plea and, second, what sentence to impose in your case. Do
14 you understand all of that?

15 THE DEFENDANT (Interpreter): Yes.

16 THE COURT: Now, we've been over the charge
17 contained in count one in the bill of indictment. Put simply,
18 the charge here is drug conspiracy involving methamphetamine.
19 Have you talked to your lawyer about that charge?

20 THE DEFENDANT (Interpreter): Yes.

21 THE COURT: Do you understand it?

22 THE DEFENDANT (Interpreter): Yes.

23 THE COURT: Are you guilty of that crime?

24 THE DEFENDANT (Interpreter): Yes.

25 THE COURT: Okay. Now, there is a plea agreement in

1 the case. Ms. Ford, do you want to tell us about that.

2 MS. FORD: Yes, sir.

3 In a plea agreement between the United States of
4 America and Luis Enrique Garcia, defendant agrees to enter a
5 voluntary plea of guilty to count one as set forth in the bill
6 of indictment and admits to being, in fact, guilty as charged
7 in count one.

8 If the court finds the defendant's plea to be
9 voluntary and knowingly made and accepts the plea, then the
10 United States will move at the appropriate time to dismiss any
11 remaining count as to this defendant in the bill of
12 indictment.

13 He understands that each and every provision set
14 forth in the plea agreement is a material term of the plea
15 agreement.

16 Your Honor has already gone over the statutory
17 minimum/maximum sentences.

18 With regard to the sentencing guidelines, the
19 parties agree that they will jointly recommend the following:

20 That the amount of mixture and substance containing
21 a detectable amount of methamphetamine that was known to or
22 reasonably foreseeable by the defendant was more than
23 1,500 grams but less than 5,000 grams, resulting in a base
24 offense level of 34.

25 That he should receive a role enhancement pursuant

1 to Section 3B1.1. However, the parties reserve their right to
2 advocate whether the increase should be two, three or four
3 levels.

4 The government agrees that the defendant's entry of
5 plea is timely unless otherwise set forth herein.

6 The parties agree that they will make the above
7 recommendations as to the adjusted offense level and will
8 recommend no other enhancements, reductions, departures or
9 variances to the court.

10 With regard to the (inaudible), the defendant
11 stipulates that there is a factual basis for the plea of
12 guilty.

13 With regard to waivers, the defendant is aware that
14 in exchange for the concessions made by the United States in
15 the plea agreement, he waives all such rights to contest the
16 conviction except for claims of ineffective assistance of
17 counsel or prosecutorial misconduct.

18 There is a section on assistance to the United
19 States in the plea agreement.

20 And there are no agreements, recommendations or
21 understandings between the parties in this case other than
22 those explicitly set forth in the plea agreement or as noticed
23 to the court during the plea colloquy and contained in writing
24 in a separate document signed by all the parties.

25 The plea agreement is signed by Mr. Kaufman, by

1 Mr. Morgan, and by the defendant himself.

2 THE COURT: Thank you very much.

3 Mr. Morgan, would you like to add anything to that
4 summary?

5 MR. MORGAN: Your Honor, when we conclude this
6 proceeding, Mr. Garcia is going to sign a consent order for
7 Your Honor's consideration in light of the fact that his plea
8 agreement requires him to consent to the forfeiture of the
9 cash seized. I believe that's listed in the indictment.
10 Other than that, nothing to add.

11 THE COURT: All right. Thank very much. We'll take
12 up that item at the end.

13 Mr. Garcia, let me come back to you, then, for a few
14 more questions. What you've heard Ms. Ford provide, of
15 course, is a summary of the highlights of your agreement.
16 Each and every provision of that document is important whether
17 she mentioned it or not.

18 Have you been over your plea agreement carefully
19 with your lawyer?

20 THE DEFENDANT (Interpreter): Yes.

21 THE COURT: Do you understand that those are the
22 terms of your plea agreement with the government and do you
23 agree to those terms?

24 THE DEFENDANT (Interpreter): Yes.

25 THE COURT: Now, you are waiving some rights you

1 have to appeal so I'm going to ask you a couple of questions
2 about that.

3 First of all, do you understand that the right to
4 appeal your conviction and/or your sentence has been expressly
5 waived in your plea agreement?

6 THE DEFENDANT (Interpreter): Yes.

7 THE COURT: Do you further understand that the right
8 to challenge your conviction and/or your sentence in what's
9 called a post-conviction proceeding has also been expressly
10 waived in your plea agreement?

11 THE DEFENDANT (Interpreter): Yes.

12 THE COURT: Is that your signature that appears on
13 the plea agreement?

14 MR. MORGAN: Just one moment, please.

15 I'm sorry, Judge, I had the first one before it was
16 amended.

17 THE DEFENDANT (Interpreter): Yes.

18 THE COURT: Thank you very much.

19 Now, Mr. Garcia, has anybody threatened, intimidated
20 or forced you to enter your guilty plea today?

21 THE DEFENDANT (Interpreter): No.

22 THE COURT: Other than the terms of your plea
23 agreement, has anybody made you promises of leniency or a
24 light sentence to get you to plead guilty?

25 THE DEFENDANT (Interpreter): No.

1 THE COURT: Have you had enough time to talk to your
2 lawyer about any possible defenses you might have to these
3 charges?

4 THE DEFENDANT (Interpreter): Yes.

5 THE COURT: Are you satisfied with the services of
6 your lawyer in this case?

7 THE DEFENDANT (Interpreter): Yes.

8 THE COURT: Is there anything you'd like to say at
9 this time about his services?

10 THE DEFENDANT (Interpreter): That's all. I really
11 am guilty.

12 THE COURT: Okay. Have you heard and understood all
13 parts of this proceeding and do you still wish to plead
14 guilty?

15 THE DEFENDANT (Interpreter): Yes.

16 THE COURT: Do you have any questions or statements
17 you'd like to make at this time?

18 THE DEFENDANT (Interpreter): No.

19 THE COURT: Now, Mr. Garcia, what you're doing
20 today, of course, is entering your guilty plea to count one in
21 the bill of indictment. That's the drug conspiracy charge
22 that we went over earlier during this proceeding. You're
23 doing all that pursuant to the terms of a plea agreement which
24 we've also reviewed here today. Have you talked to Mr. Morgan
25 about all this?

1 THE DEFENDANT (Interpreter): Yes.

2 THE COURT: Is this what you want to do?

3 THE DEFENDANT (Interpreter): That's okay, yes.

4 THE COURT: And Mr. Morgan, as his counsel, finally,
5 have you reviewed with your client all features of his case,
6 but in particular, his plea agreement, and are you satisfied
7 he understands these things and knows what he is doing?

8 MR. MORGAN: I have and I am.

9 THE COURT: All right. That completes the questions
10 on the form. Let me take a quick look at this.

11 (Pause.)

12 THE COURT: Okay. Mr. Morgan, we'll send that out
13 to you momentarily.

14 MR. MORGAN: Thank you, Your Honor.

15 (Pause.)

16 THE COURT: All right. The record will reflect that
17 the electronic plea and Rule 11 form has been signed by the
18 defendant, Mr. Garcia, and also by his counsel, Mr. Morgan.
19 Therefore, based on the representations and answers given both
20 by the defendant and his lawyer in this proceeding, the court
21 does find that the defendant's plea of guilty is knowingly and
22 voluntarily made; and that the defendant understands the
23 charges, potential penalties, and consequences of his plea.
24 Accordingly, the defendant's plea of guilty is hereby
25 accepted. We'll make the plea and Rule 11 form a part of his

1 file.

2 All right. It sounds like we may have one more item
3 that we need to take up.

4 Ms. Ford, is that correct?

5 MS. FORD: Yes, sir.

6 THE COURT: Let me take a look here.

7 (Pause.)

8 THE COURT: Okay. For the record, I do have in hand
9 the proposed consent order and judgment of forfeiture. Of
10 course, it speaks for itself, but it does appear to deal with
11 some United States currency that may have been seized as part
12 of the investigation into the case. This document is signed
13 by Ms. Ford on behalf of her colleague, Mr. Kaufman, by the
14 defendant, Mr. Garcia, and also by Mr. Morgan.

15 Mr. Morgan, any objection to my entering this?

16 MR. MORGAN: No, Your Honor. We'd ask you to.

17 THE COURT: All right. I will sign on behalf of the
18 court. And we will make this a part of his file as well.

19 Anything else, Ms. Ford?

20 MS. FORD: No, sir.

21 THE COURT: Mr. Morgan?

22 MR. MORGAN: No, Your Honor. Thank you.

23 THE COURT: Okay. Good luck, Mr. Garcia. Thank
24 you.

25 (End of proceedings.)

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NORTH CAROLINA

3 CERTIFICATE OF REPORTER

4
5
6 I, Cheryl A. Nuccio, Federal Official Realtime Court
7 Reporter, in and for the United States District Court for the
8 Western District of North Carolina, do hereby certify that
9 pursuant to Section 753, Title 28, United States Code, that
10 the foregoing is a true and correct transcript of the
11 digitally-recorded proceedings, transcribed to the best of my
12 ability, held in the above-entitled matter and that the
13 transcript page format is in conformance with the regulations
14 of the Judicial Conference of the United States.

15
16 Dated this 26th day of January 2014.

17
18 s/Cheryl A. Nuccio

19 Cheryl A. Nuccio, RMR-CRR
20 Official Court Reporter
21
22
23
24
25